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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1814

UNITED SYSTEM SERVICE, INC., et al., *Petitioners,*

v.

FEDERAL COMMUNICATIONS COMMISSION and THE UNITED STATES OF AMERICA, et al., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners, United System Service, Inc., and the United Telephone System operating companies, request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals, which has not been officially reported, appears at Appendix A of the American Telephone and Telegraph Company's petition for writ of certiorari.[1] Therein the court affirmed,

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[1] Citations herein to the appendices are to pages of a separately bound companion volume to the Petition for Writ of Certiorari filed by AT&T, No. 76-1677, and cited as "Pet. App."

by a two-to-one vote, the Federal Communications Commission's First Report and Order, which is reported at 56 F.C.C. 2d 593 (1975) and appears at Appendix B; the Commission's Second Report and Order, which is reported at 58 F.C.C. 2d 736 (1976) and appears at Appendix C; the Commission's Memorandum Opinion and Order released February 13, 1976, which is reported at 57 F.C.C. 2d 1216 and appears at Appendix D; the Commission's Memorandum Opinion and Order released March 15, 1976, which is reported at 58 F.C.C. 2d 716 and appears at Appendix E; and the Commission's Memorandum Opinion and Order released April 28, 1976, which is reported at 59 F.C.C. 2d 83 and appears at Appendix F.

JURISDICTION

The judgment of the Court of Appeals, which was entered on March 22, 1977, appears at Appendix G. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Whether the Orders of the Federal Communications Commission ("FCC") requiring registration of terminal equipment used predominantly for intrastate and local exchange service violate the terms of Sections 2(b)(1) and 221(b) of the Communications Act ("Act") which expressly reserve authority to the states over facilities used for or in connection with intrastate communications or telephone exchange service even though a portion of such exchange service constitutes interstate communications.

2. Whether inclusion of carrier terminal equipment in the registration program reflects an unlawful

assertion of prior-approval authority over carrier equipment where the Communications Act grants the FCC no such authority and where the FCC has acted without any valid or rational reasons.

STATUTES AND REGULATIONS INVOLVED

The statutory provisions involved, Sections 2, 2 (a), 2(b)(1), 4(i), 4 (j), 201-205, 205 (a), 208, 214, 215, 215 (b), 218, 221 (b), 222 (f), 301, 305 (a), 305 (d), 313, 313-14, 403-04, and 410 of the Communications Act of 1934, are set forth in the attached Appendix. Pertinent portions of part 68 of the FCC rules, setting forth the FCC's registration regulations, appear at Appendix I.

STATEMENT OF THE CASE

A. The Nature and Regulation of Telephone Service.

Telephone service typically begins with a piece of "terminal equipment"—a telephone [2]—which is provided to subscribers by the local telephone company. The terminal equipment is connected to a pair of wires that lead to a central office where the telephone company maintains its switching apparatus. Regardless of the destination of a subscriber's call—be it across the street or across the continent—his call will originate from the same piece of terminal equipment and travel over the same wires to the telephone company's central switching office. From this central switching office, calls are switched either within the local exchange, or to other exchanges which may be within or outside the state.

All calls, then, over the switched telephone network make use of common terminal equipment, common lines

[2] Other forms of terminal equipment would be private branch exchange switchboards (PBXs) and answering or recording devices.

to a central switching office, and common switching apparatus in that office. Of the calls transmitted over these common facilities, about 97% are local or intrastate while only about 3% are interstate. *In re Telerent Leasing Corp.*, 45 F.C.C. 2d 204, 211 (1974); *aff'd sub nom. North Carolina Utilities Comm'n.* v. *FCC*, 537 F.2d 787 (4th Cir. 1976), *cert. denied*, —— U.S. ——, 45 U.S.L.W. 3432 (U.S. Dec. 13, 1976).

The provision of telephone terminal equipment has long been regulated by the various state commissions. Indeed, such state regulation long antedates the Communications Act of 1934. Thus, it is in telephone company's state tariffs that the rates for and conditions on which telephone terminal equipment is provided are set forth.

At the time Congress enacted the Communications Act, it was aware that facilities, such as terminal equipment, were used mainly for intrastate service. In order to preserve the existing state jurisdiction over such facilities from Federal encroachment,[3] Congress included Section 2(b)(1) in the Act, 47 U.S.C. § 152(b)(1). It also included Section 221(b), 47 U.S.C. § 221(b), to preserve state jurisdiction over local exchange service and facilities even though such facilities may overlap state boundaries. Congress thus sought in the Communications Act to complement, not supersede, existing state regulatory jurisdiction. The FCC was

[3] Both Sections 2(b)(1) and 221(b) preserve the FCC's power to license radio frequencies under Section 301, 47 U.S.C. § 301, to ensure that carriers, like any other users of the limited number of available radio frequencies, do not use frequencies allocated to others. See, *e.g.*, H.R. Rep. No. 910, 83d Cong., 1st Sess. 1 (1953). Section 221(b) also requires, as a condition to exemption, that state regulation exist, which it does in every state.

given authority to regulate certain aspects of communications—such as the rates for "interstate" calls (Sections 201-205, 47 U.S.C. §§ 201-205) and the construction or operation of new "interstate lines" (Section 214, 47 U.S.C. § 214)—which the states could not or did not effectively control. However, the language and legislative history of Sections 2(b)(1) and 221(b) confirm that Congress expressly withheld from the FCC any jurisdiction over matters—such as terminal equipment used for intrastate and exchange service—which are subject to effective state regulation.

B. The FCC's Registration Program and Other Proceedings.

Before the FCC's decision in *Telerent, supra,* 45 F.C.C. 2d 204, it had not attempted to oust the state commissions from their traditional jurisdiction over terminal equipment and related ratemaking policies. Indeed, the only instances in which the FCC had exercised jurisdiction over terminal equipment involved highly specialized equipment not used in connection with switched telephone exchange service as defined by the Act.[4] When the FCC did exercise jurisdiction over the interstate aspects of the switched telephone network, it was always careful not to infringe on state regulation. Therefore, when it considered the lawfulness of tariff provisions governing interconnection, it ruled only as to the legality of the interconnect conditions that were part of the *interstate* tariffs of telephone carriers. See *e.g., Use of Recording Devices,* 11 F.C.C. 1033 (1947); *Jordaphone Corp.* v. *AT&T,* 18

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[4] See *AT&T-TWX,* 38 F.C.C. 1127 (1965); *United States Dept. of Defense* v. *General Tel. Co.,* 38 F.C.C. 2d 803 (1973), *review denied,* FCC 73-854 (1973); *aff'd per curiam sub nom. St. Joseph Tel. & Tel. Co.* v. *FCC,* 505 F.2d 476 (D.C. Cir. 1974).

F.C.C. 644 (1954); *Hush-A-Phone Corp.* v. *AT&T,* 22 F.C.C. 112 (1957); *Carterfone,* 13 F.C.C. 2d 420, *reconsid. denied,* 14 F.C.C. 2d 571 (1968). Notwithstanding the limited scope of the above decisions, it is upon such decisions that the FCC relied in promulgating its registration Orders that are the subject of this petition.

Carterfone, 13 F.C.C. 2d 420, *reconsid. denied,* 14 F.C.C. 2d 571 (1968), was a complaint case against AT&T brought by the inventor of the Carterfone, a device for linking telephone subscribers and two-way radio operators. The case was initiated by a complaint filed in the federal district court in Texas, and under the doctrine of primary jurisdiction was referred to the FCC. The case was not a rulemaking proceeding and did not purport to bind anyone not a party to it. It involved only the long-distance, interstate tariffs of AT&T filed with the FCC—not the local or intrastate tariffs of any of the AT&T operating companies or the tariffs of any Independent telephone company. No question of substituting customer-provided terminal equipment or equipment offered by a local telephone company was raised.[5] The decision in *Carter-*

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[5] Indeed, in *Carterfone,* the FCC itself rejected the very position asserted by FCC counsel in the court below. There, General Telephone "contended that the Commission 'has opened the door to customer ownership of telephone handsets.' " The Commission flatly rejected this contention on the basis that "the facts of this case did not involve the furnishing of purely telephone system equipment telephone-to-telephone on the message toll telephone system." 14 F.C.C. 2d at 572.

Three months later, the FCC again rejected the same contention, noting that *Carterfone* did *not* hold that a customer may substitute his own equipment for that furnished by the telephone company. *AT&T "Foreign Attachment" Tariff Revisions,* 15 F.C.C. 2d 605, 609-610, *reconsid. denied,* 18 F.C.C. 2d 871 (1969).

fone did not purport to restrict state commissions, nor to affect the states or their ratemaking policies in any way. Thus, no question of interfering with state jurisdiction over local and intrastate service or rate policies was present.[6]

About the same time as its *Carterfone* decision, the FCC made the following observation:

> When the Communications Act was enacted in 1934, Congress was concerned that the telephone might be considered an instrumentality of interstate communication merely because of the circumstance that every telephone can be connected with a toll line for interstate calls. Since the interstate calls of the independent telephone companies were such a small part of their business as to be merely incidental, *Congress agreed with the USITA* [United States Independent Telephone Association] *position that "the tail should not wag the dog"; that their telephone facilities should remain under State regulation,* primarily because they were essentially local but also to avoid an unnecessary burden to the Commission and the small independent companies. . . . *General Tel. Co. of Calif.,* 14 F.C.C. 2d 695, 696 (1968) (Emphasis added).

As recently as 1973, the then Chairman of the FCC stated: "[W]e . . . lack primary jurisdiction over telephone sets which are a primary part of the facilities used in providing exchange telephone service." Letter

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[6] *Hush-A-Phone Corp. v. AT&T,* 22 F.C.C. 112 (1957), was likewise a complaint case against AT&T and also involved only an AT&T interstate tariff filed with the FCC. Again, no local operating companies were involved, and no states or state commissions were parties. The Hush-a-Phone was an attachment for a telephone intended to insure privacy. No question of substituting customer-provided terminal equipment was presented.

of Chairman Burch to Senator Randolph. 119 Cong. Rec. 30962 (1973).

Despite the FCC's subsequent reliance on *Carterfone, supra*, as being a watershed opinion, the fact is that it only involved interstate services and tariffs. It did not involve the state commissions' authority to maintain their jurisdiction over facilities used for or in connection with intrastate exchange services pursuant to Section 2(b)(1) of the Act, 47 U.S.C. § 152 (b)(1).

After the *Carterfone* decision, telephone companies in interstate communications filed with the FCC amended tariffs changing restrictions on the connection of customer-provided terminal equipment to provide that interconnection would henceforth be permitted subject to two requirements designed to safeguard the telephone network: (1) that any network control signaling unit must be furnished, installed and maintained by the telephone company; and (2) that no subscriber could connect terminal equipment directly to the telephone network without the use of a protective interface device supplied by the telephone company. The telephone companies filed similar revised tariffs with the regulatory commissions of the states in which the companies provided intrastate and local exchange service.

In 1972, the FCC established the present proceeding, Docket No. 19528, for the purpose of allowing customers to substitute their own network control signaling units and their own connecting arrangements for those of the telephone companies. *Interstate and Foreign MTS and WATS*, 35 F.C.C. 2d 539 (1972). Subsequently, it requested comments on a proposed registration program in lieu of carrier connecting arrangements. 40 F.C.C. 2d 315, 316-17 (1973).

During this time the state commissions were becoming increasingly concerned about the adverse impact of increased customer usage of terminal equipment on intrastate and exchange telephone rates and service. Accordingly, the National Association of Regulatory Utility Commissioners ("NARUC") undertook a study which concluded that expanded customer substitution of equipment would increase telephone rates for local residential and business telephone users by 360-740 million annually by 1980 and by almost $1 billion annually by 1984.[7] Several state commissions then began to consider proposals to limit the expansion of customer substitution of intrastate and exchange facilities and services for those provided by the telephone companies. The FCC's response to such state commission proposals was its declaration in the *Telerent Leasing* case, *supra,* 45 F.C.C. 2d 204 (1974), that its jurisdiction extended to terminal equipment connected to local exchanges.

On November 7, 1975, the FCC released its First Report and Order in this proceeding. *Interstate and Foreign MTS and WATS,* 56 F.C.C. 2d 593 (Pet. App. 1b). Therein it promulgated regulations establishing a sweeping new program for federal registration of all types of terminal equipment except PBXs, key telephone systems, and main station telephones. These categories of equipment were subsequently included in the program. 58 F.C.C. 2d 736 (1976) (Pet. App. 1c).

Under the FCC's registration program, customer-supplied terminal equipment registered with the FCC may—contrary to most existing state tariffs—be directly connected to a carrier's exchange facilities without the use of either a connecting arrangement or a

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[7] NARUC, *Report After Investigation* 19 (1974).

carrier-supplied network control signaling unit as is presently required to protect the network and telephone employees from harm. (Pet. App. 6i). Carriers must also register their own terminal equipment before connecting it to their own network, 56 F.C.C. 2d 593, 601 (1975) (Pet. App. 15b-16b), even though they have safely utilized their own equipment for decades and even though this will require them to modify their equipment needlessly and expend millions of dollars for registration. Finally, despite its earlier promise to consider the economic impact of expanded customer substitution, the FCC declined to address this issue before adopting its registration program. 56 F.C.C. 2d 593, 600-601; 58 F.C.C. 2d 736, 738-739 (1976) (See Pet. App. 14b, 6c-7c).

C. The Decision Below.

The FCC's registration Orders were affirmed by the Court of Appeals for the Fourth Circuit by a two-to-one vote. (Pet. App. 1a). However, prior to reviewing the Orders, the Court of Appeals stayed the major aspects of the registration program, recognizing that the program's impact would be largely irreversible. (Pet. App. 1j-12j). The court has continued that stay in effect pending petitions for certiorari.[8] (Pet. App. 13j).

Prior to the decision below, another panel of the Fourth Circuit had affirmed the FCC's *Telerent* decision in *North Carolina Utilities Comm'n.* v. *FCC,* 537 F.2d 787 (1976), *cert. denied,* 45 U.S.L.W. 3432 (U.S.

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[8] The court's stay, which continues in effect, prevents the FCC from implementing its registration program for all carrier equipment and for PBXs, key systems, main stations and extension telephones; the program has been allowed to commence only for customer-provided data and ancillary equipment (e.g., answering devices) other than extension telephones—a phase of the program having significantly less impact. (Pet. App. 1j-12j).

Dec. 13, 1976) (*"North Carolina I"*) and had ruled that Sections 2 (b)(1) and 221(b) do not bar the FCC from claiming regulatory jurisdiction over terminal equipment connected to local exchanges.

The instant case, however, involves not merely some abstract declaration of FCC jurisdiction but, rather, a major federal regulatory program displacing existing state authority. Against this background, the panel below agreed to re-examine the holding of *North Carolina I,* emphasizing that the FCC's action "implicat[ed] significant state and federal interests." (Pet. App. 12a). Nevertheless, on the merits, the panel adhered to *North Carolina I* by a two-to-one vote.

The majority also rejected the claim that the FCC's inclusion of carrier equipment in the registration program was an irrational and unjustifiable exercise of a non-existent power. (Pet. App. 25a-26a, 27a-29a). The majority could not cite any provision of the Act expressly granting the FCC authority to require prior federal approval of carrier equipment. Nor did the majority opinion address the carriers' detailed arguments that the FCC's decision to require carrier-equipment registration rested on irrational and improper reasons, even assuming the FCC did possess the requisite prior-approval power.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals would oust the states from their historical jurisdiction to regulate the interconnection of terminal equipment to local telephone exchanges. Since this jurisdiction appears to have been reserved to the states and withheld from the FCC by Sections 2 (b)(1) and 221(b) of the Com-

munications Act, 47 U.S.C. §§ 152 (b)(1) and 221(b), the decision of the Court of Appeals presents a major question of federal v. state jurisdiction which has not been but should be settled by this Court. This is precisely the kind of question that is appropriate for certiorari.

An abstract assertion of such regulatory jurisdiction was considered in *North Carolina I*. It is only with this case, however, that the FCC has sought to adopt a specific regulatory program based on its jurisdictional claim over terminal equipment. Thus, this case, for the first time, brings into sharp focus the extraordinary reach of the FCC's attempted regulatory grasp (see Pet. App. 1i-39i) and the immediate displacement of state authority that has endured for decades. This case presents a far different and far stronger case for certiorari than did *North Carolina I*.

Moreover, unlike *North Carolina I*, this case presents another issue independently warranting review by this Court; namely, the FCC's claimed authority to require carriers to register their own terminal equipment before it may be connected by carriers to their own local exchanges. Such registration was required by the FCC solely to equalize competition among providers of terminal equipment. This action is without foundation in the Communications Act.

I. The Decision Of The Court Of Appeals Ousts The States From Their Historical Regulatory Jurisdiction And Presents A Major Question Of Federal Versus State Jurisdiction Which Has Not Been But Should Be Settled By This Court.

1. The regulation of terminal equipment connected to local exchanges has long been within the jurisdic-

tion of state regulatory commissions. This jurisdiction appears to have been reserved to the states by the specific language of Section 2 (b)(1) of the Communications Act set forth herein:

> Subject to the provisions of section 301 of this title [dealing with radio frequencies and not applicable to this case], nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, *facilities,* or regulations *for or in connection with intrastate communication service* by wire or radio of any carrier .... 47 U.S.C. § 152(b)(1) (Emphasis added)

Nevertheless, the decision of the Court of Appeals has construed the provisions of Section 2 of the Communications Act of 1934, 47 U.S.C. § 152, to give the Commission jurisdiction "with respect to . . . facilities . . . for or in connection with intrastate communication service by wire or radio of any carrier" *whenever such facilities are also, to any extent, used for or in connection with interstate communication services.* In essence, the court has construed the words "nothing shall" in Section 2 (b)(1) to mean "nothing shall . . . except. . . ." This re-write of the provision of Section 2(b)(1) of the Act so as to qualify the restriction on FCC jurisdiction where none is explicitly set forth therein is grounded on a basic premise in the court's opinion which is demonstrably erroneous.

The opinion of the Court of Appeals began by stating that "section 2 (a) of the (Communications) Act, 47 U.S.C.A. § 152 (a), provides that the Act *and the FCC's jurisdiction* 'shall apply to all interstate and foreign communications by wire' " and that Section 2 (a) is a "general grant of authority to the

FCC." (Pet. App. 4a). The court was wrong and could not have made a more faulty start in deciding this case, particularly in view of the number of errors that appear to have subsequently emanated from such a determination.

Section 2 (a) of the Communications Act of 1934, 47 U.S.C. §152 (a), reads in its entirety as follows:

> The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone.

Section 2 (a) does nothing more than describe the scope of the Communications Act of 1934 in terms of those activities to which it does and does not apply. It makes absolutely no reference whatsoever to the FCC's jurisdiction. Moreover, assuming, *arguendo,* that Section 2 (a) provides that the *Act* shall apply to *all* interstate or foreign communications by wire, it would be serious error to decide that the scope of the Act and the FCC's jurisdiction are one and the same in this or any other respect absent a statutory declaration to that effect.

To illustrate this point, consider the following examples where the Communications Act of 1934 specifically applies to certain activities over which the

FCC has absolutely no jurisdiction whatsoever (illustrations which are by no means exhaustive).

1. The Act applies to the merger of domestic telegraph companies and provides job, wage level, fringe benefit, and other protection for employees of the constituent companies. However, the FCC has no jurisdiction or duties with respect to the provisions for protection of employees of the constituent companies. Instead, the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) are vested with the jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act. Section 222 (f) 47 U.S.C. § 222 (f).

2. Section 2 (a) makes the Act "apply . . . to licensing and regulating all radio stations . . ." yet the authorization of government radio stations and of stations to foreign governments operating at the seat of government of the United States are vested in the President not the FCC. Section 305 (a) and (d), 47 U.S.C. § 305 (a) and (d).

3. The Act specifically applies the antitrust laws to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign communications. The Act then provides that if any FCC radio station licensee is found guilty of violating any of such laws during any civil or criminal action brought under the provisions of such laws or any proceedings to enforce or review findings and orders of the Federal Trade Commission (or certain other government agencies, *the court* in addition to the penalties imposed by such laws may order that the license of the licensee be revoked. The FCC has absolutely no jurisdiction in this in-

> stance, and the authority to determine whether or not to revoke the license of the licensee is vested solely in the court. Section 313, 47 U.S.C. § 313.

From the foregoing examples, it is clear that the scope of the Communications Act of 1934 and the FCC's jurisdiction are not one and the same, and that the Act applies to many activities over which the FCC has absolutely no jurisdiction whatsoever. Thus, it is a matter of simple logic that *even if* the Act applies to all interstate and foreign communication, the FCC's jurisdiction does not.

The Court of Appeals' failure to realize and appreciate the distinction between what it perceived to be the scope of the Communications Act of 1934 and the FCC's jurisdiction frustrated its efforts time and time again. The court continuously evaluated the FCC's jurisdiction on the basis that the FCC was vested with full constitutional power under the Commerce Clause to regulate all interstate and foreign communication and such a misconception pervaded its conclusions. The following is a prime example:

> *North Carolina I* correctly reasoned that if Section 2 (b)(1) were construed to give the states primary authority over joint terminal equipment, i.e., equipment used interchangeably for interstate and intrastate service, then-whenever state regulations conflicted with federal rules applicable to interstate calls—the FCC would necessarily be prevented from discharging *its statutory duty under sections 1 and 2 (a) to regulate interstate communication.* (Pet. App. 13a) (Emphasis added).

At this point, it is apparent that Section 2 (a) of the Communications Act of 1934, 47 U.S.C. § 152 (a),

does not give the FCC jurisdiction over all interstate and foreign communication, either explicitly or by implication. It is also apparent that since the Communications Act of 1934 is greater in scope and application than the FCC's jurisdiction, the FCC *does not* have jurisdiction over all interstate and foreign communication. Thus, it is impossible to determine the parameters of the FCC's jurisdiction and statutory powers by simple resort to Commerce Clause analysis or by any definitional niceties between intrastate and interstate commerce. Whatever jurisdictional or statutory powers the FCC may have must be gleaned from the specific provisions of the Communications Act of 1934 itself.

Congress did not intend to confer upon the FCC the full extent of its power to regulate interstate and foreign commerce, and the issue in this case is simply whether, as a matter of statutory construction, the FCC has been granted the authority to regulate the interconnection of terminal equipment to local telephone exchanges and not whether Congress could have granted the FCC that authority pursuant to its power to regulate interstate and foreign commerce.

Section 2 (b)(1) of the Communications Act, 47 U.S.C. § 152 (b)(1), is one of the pertinent limitations on the FCC's jurisdiction. In that section, Congress sought to preserve the status quo and to protect the then existing state jurisdiction over intrastate telecommunication services by providing that:

> . . . nothing in this chapter shall be construed to apply to or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, *facilities,* or regulations *for or in*

connection with intrastate communication service. . . ." (Emphasis added).

Indisputably, terminal equipment is included within the term "facilities," and the use of terminal equipment when connected with the local telephone exchange is certainly "for or in connection with intrastate communication service," even though on occasion it may also be used for interstate communication service. In fact, both at the time of adoption of the Communications Act and at present, terminal equipment is used approximately 97-98 percent of the time for or in connection with intrastate communication service and only the remaining 2-3 percent of the time for interstate communication service. *See,* 78 Cong. Rec. 10316 (1934) and *In Re Telerent Leasing Corp., supra,* 45 F.C.C. 2d at 211. Thus, the literal language of that section would appear to reserve to the states jurisdiction to regulate the interconnection of terminal equipment to local telephone exchanges and to withhold such jurisdiction from the FCC.

Nevertheless, the Court of Appeals determined that Section 2 (b)(1) of the Communications Act was ineffective to prevent the FCC from assuming jurisdiction to regulate the interconnection of terminal equipment to local telephone exchanges. The problem, as the Court of Appeals saw it, was that Section 2 (b)(1) applied by its terms to protect state jurisdiction only with respect to intrastate communication service. However, the Court of Appeals thought that because of the dual use made of almost all terminal equipment (i.e., approximately 97-98 percent intrastate and 2-3 percent interstate), it should be treated as an integral part of interstate communication service rather than intra-

state communication service, and, therefore, within the jurisdiction of the FCC to regulate its interconnection to local telephone exchanges. (Pet. App. 13a-16a).

The error of the Court of Appeals occurred because of its insistence in attempting to classify terminal equipment as an integral part of either intrastate or interstate communication service and to classify terminal equipment as "intrastate facilities" or "interstate facilities." Insofar as Section 2(b)(1) of the Communications Act is concerned, any such classification is irrelevant. The applicability of Section 2(b)(1) does not depend upon whether such terminal equipment is a part of intrastate or interstate communication service; Section 2(b)(1) applies whenever any such terminal equipment is used *in connection with* intrastate communication service. Obviously, since terminal equipment is used approximately 97-98 percent of the time in intrastate communication service, it is used in connection with intrastate communication service. Thus, jurisdiction to regulate its interconnection to local telephone exchanges is reserved to the states, and the FCC has no such jurisdiction, contrary to the decision of the Court of Appeals.

Section 221(b) of the Communications Act, 47 U.S.C. § 221(b), is another pertinent limitation on the FCC's jurisdiction. In that section, Congress sought to protect state jurisdiction over telephone exchange service even though communication within a telephone exchange area may be across state lines by providing that:

> . . . nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, *facilities,* or regulations for or in connection with wire, mobile, or point-to-point radio telephone

> exchange service, or any combination thereof, *even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.* (Emphasis added).

Indisputably, terminal equipment is included within the term "facilities," and such equipment would be used in connection with telephone exchange service. Thus, the literal language of that section would appear to reserve to the states jurisdiction over terminal equipment used in connection with local telephone exchange service even if a portion of such exchange service constitutes interstate or foreign communication (and, presumably, even if such terminal equipment is used in effecting such interstate or foreign communication).

Nevertheless, the Court of Appeals determined that Section 221(b) of the Communications Act was inapplicable and that its sole purpose was to reserve to the states jurisdiction over rates within the same local telephone exchange even if certain of those rates would technically apply to interstate communication service, such as in the multi-jurisdictional cities of New York, Washington, D.C., and Kansas City. (Pet. App. 13a). The Court of Appeals ignored the plain and clear language of that section, which refers not only to charges (or rates), but to classifications, practices, services, *facilities,* and regulations as well. If full significance is given to the term "facilities" in that section, it becomes clear that the Congress indeed intended to reserve to the states jurisdiction to regulate the interconnection of terminal equipment to local telephone exchanges and to withhold that same jurisdiction from the FCC throughout the Communications Act—and not

just in section 221(b). It would make no sense to reserve such jurisdiction to the states in the local telephone exchanges in the multi-jurisdictional cities and not elsewhere—there would be no logical basis for such a distinction.

The decision of the Court of Appeals in this instance has reaffirmed its own earlier decision in *North Carolina Utilities Comm'n.* v. *FCC,* 537 F.2d 787 (4th Cir. 1976), *cert. denied,* —— U.S. ——, 45 U.S.L.W. 3432 (U.S. Dec. 13, 1976),—the latter of which was followed by the First Circuit in *Puerto Rico Tel. Co.* v. *FCC,* No. 76-1134 (1st Cir. March 31, 1977), albeit with certain cautious language that "read literally, these provisions (Sections 2(b)(1) and 221(b)) do appear to preclude the federal jurisdiction extended elsewhere in (the Act)" and that so far as Section 2(b)(1) is concerned, "the conflicting statutory language leaves the matter far from free of doubt," *See, Puerto Rico Tel. Co.* v. *FCC, supra* at 7-8. However, the District of Columbia Circuit has taken the contrary position and has construed Sections 2(b)(1) and 221(b) of the Communications Act as significant limitations on the FCC's jurisdiction in *Kitchen* v. *FCC,* 464 F.2d 801 (D.C. Cir. 1972). In that case, the District of Columbia Circuit held that Section 221(b) barred FCC jurisdiction over an exchange building despite the assertion that some traffic switched through the facility was interstate and brought it within the FCC's authority under Section 214. Citing the statutory language and legislative history, the District of Columbia Circuit stated that "even" if Section 214 otherwise applied, "an exercise of jurisdiction would still be precluded by Section 221 (b)." *Kitchen* v. *FCC, supra,* at 803.[9]

[9] See also *NARUC* v. *FCC,* 533 F.2d 601, 610-611 (D.C. Cir. 1976).

Obviously, there is a conflict between the various circuits concerning the proper statutory construction of the Communications Act, especially as it relates to the proper allocation of jurisdiction between the federal and state governments. Such a conflict is a supporting reason why this Court should grant a writ of certiorari.

The legislative history of the Act confirms Congress' specific intent to prevent the FCC from displacing existing state regulation. After protests by thirty-seven states and the state commissioners' national association,[10] the earlier versions of the draft bills were revised to omit language that would have facilitated federal control and to include the specific prohibitions that emerged as Sections 2(b)(1) and 221(b).[11] The very purpose of the revisions was to "protect the state commissions from being overridden by the FCC" and to reserve to the states "exclusive" jurisdiction in the sphere expressly reserved to them by statute.[12]

Indeed, as recently as 1973—one year before the *Telerent* proceeding began—the FCC advised Congress:

> [W]e . . . lack primary jurisdiction over telephone sets which are a primary part of the facilities used in providing exchange telephone service.

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[10] See *Hearings on S.6 Before the Senate Comm. on Interstate Commerce*, 71st Cong., 1st Sess. 2167 (1930).

[11] See S. 2910, § 210, 73d Cong., 2d Sess. (1934), introduced 78 Cong. Rec. 3275; H.R. 8301, 73d Cong., 2d Sess. (1934), introduced 78 Cong. Rec. 3367 (1934).

[12] *Hearings on S. 2910 Before the Senate Comm. on Interstate Commerce*, 73d Cong., 2d Sess. 179 (1934); S. Rep. No. 781, 73d Cong., 2d Sess. 3 (1934).

> As you know, the Communications Act specifically *excludes* the Federal Communications Commission from any authority with respect to charges, classifications, practices, services, *facilities* or regulations for or in connection with intrastate and exchange telephone services of *any* telephone company. Letter from the FCC Chairman, 119 Cong. Rec. 30962 (1973). (Emphasis added).

The present subject of the FCC's registration program includes this same "telephone set" over which the FCC disclaimed jurisdiction less than five years ago in language borrowed directly from Sections 2(b)(1) and 221(b).

The lower court's failure to follow the plain language of a governing jurisdictional statute is, standing alone, ample basis for review here. The error is multiplied by the disregard of congressional intent and the FCC's own prior disclaimer of jurisdiction. This case is the epitome of an "important question of regulatory authority" normally considered on certiorari. *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 161 (1968).[13]

2. Both the immediate impact and continuing implications of the FCC's registration program argue strongly for judicial review. This program is one of the most massive ever undertaken by the FCC—affecting over 1600 telephone companies, thousands of equipment suppliers, ultimately millions of customers, and over 100 million pieces of terminal equipment. Even if the adverse impact on telephone rates is only a frac-

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[13] See also *FPC* v. *Conway Corp.*, 44 U.S.L.W. 4777 (U.S. June 7, 1976) (Federal Power Act); *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954) (Natural Gas Act); *North Carolina* v. *United States*, 325 U.S. 507 (1945) (Interstate Commerce Act).

tion of the sums predicted by NARUC, the program will increase telephone bills by millions of dollars over the next decade.

Because the FCC has adopted specific registration regulations, the case arises in the concrete setting in which this Court is accustomed to treating important issues involving allocation of regulatory authority between states and federal officials.[14] However abstract or uncertain the FCC's claim of power may have appeared in *Telerent,* this case brings into sharp focus the attempted reach of the FCC's regulatory grasp (Pet. App. 1i-39i), and the immediate displacement of state authority that has endured for decades. Consequently, the registration program presents a very different—and far stronger—case for the exercise of this Court's certiorari jurisdiction than did the decision in *North Carolina I.*

Conversely, review cannot feasibly be further delayed. The registration program once fully implemented will become irreversible; after millions of pieces of customer terminal equipment have been attached to telephone exchanges, no one seriously imagines that this process can or will be undone. Millions of dollars in costs for carrier equipment will be incurred in the *first year* alone. The lower court's stay implicitly acknowledges that review must occur now if it is to be meaningful.

The practical impact of displacing state authority long exercised by state regulatory agencies also deserves weight in considering certiorari. The majority

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[14] See, e.g., *Chemehuevi Tribe of Indians* v. *FPC,* 420 U.S. 395 (1975); *FTC* v. *Bunte Bros. Inc.,* 312 U.S. 349 (1941); *North Carolina* v. *United States,* 325 U.S. 507 (1945).

opinion conceded that "[t]he vast majority of terminal equipment has been—and is—regulated by the states . . . ." (Pet. App. 23a). Since regulated telephone service began, *state* tariffs have contained the rates, conditions and regulations governing provision of almost all terminal equipment (including the ordinary home telephone), as well as the regulations governing the use of customer-owned equipment. Both before and after enactment of the Communications Act, it is state authorities, not federal authorities, who have actively regulated nearly every aspect of terminal equipment, including the connection of customer equipment.

Sections 2(b)(1) and 221(b) apply to "facilities," "services," and "rates" for and in connection with intrastate or exchange services in identical terms. The logic of the FCC's jurisdictional claim will necessarily be extended by that agency and, in fact, it has already begun to usurp state jurisdiction over intrastate service [15] and to threaten state jurisdiction over intrastate rates.[16] The underlying jurisdictional issue should be resolved now to avoid a decade of bitter and continuing dispute about the reach of FCC authority under this keystone jurisdictional limitation.

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[15] In *AT&T*, 56 F.C.C. 2d 14 (1975), *pet. for review pending sub nom. California* v. *FCC*, D.C. Cir., No. 75-2060, the FCC ordered AT&T to allow a private line carrier to provide a particular type of *intrastate* service specifically barred by California, in addition to authorized interstate services.

[16] In the course of examining the separation of interstate and intrastate revenues, the FCC has just revealed that it is considering requiring revision of local teelphone rates "to insure that business vertical services" are not benefited by any increases in intrastate revenues. FCC 76-1008, released Nov. 8, 1976.

II. The FCC Is Not Empowered To Require Carriers To Register Their Own Terminal Equipment For Connection To Their Own Local Exchanges As Well As To Specify How Such Equipment May Be Connected.

1. Certiorari is also warranted to review the FCC's asserted authority to require registration (i.e., prior FCC approval) of carrier-provided terminal equipment before such equipment can be connected by carriers to their own local exchanges.

Nothing in the Communications Act gives the FCC authority to require carriers to obtain FCC approval before connecting terminal equipment to their own local exchanges. The limited circumstances in which the FCC has authority to require prior approval of carrier facilities—whether one describes such prior approval as licensing, registration, or certification—are set forth in Section 214 of the Act.[17] Pursuant to Section 214, carriers are required to obtain certificates of public convenience and necessity before constructing, extending, or discontinuing specified "interstate" lines. Insofar as Congress intended that the FCC have the extreme authority to require prior approval of the construction of interstate facilities, it did so for a deliberate purpose and made that grant both explicit and limited. For example, with respect to carrier facilities used in the "interstate lines" contemplated by Section 214(a), the Act provides:

> . . . nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement,

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[17] The purpose of Section 214, based on its railroad counter-part, was to prevent unnecessary lines and wasteful competition among carriers injurious to the public. *Texas & P. Ry.* v. *Gulf, C. & S.F. Ry.*, 270 U.S. 266, 277 (1926).

> or other changes in plant, operation, or equipment, *other than new construction,* which will not impair the adequacy or quality of service provided. 47 U.S.C. § 214 (a). (Emphasis added.)

Consequently, while under Section 214 (a), the FCC has authority over *new* construction of interstate lines and the facilities involved therewith, Congress has expressly denied it authority over the installation and replacement by carriers of those facilities so long as service is not impaired.

Examination of the legislative history of the Act confirms that Congress did not intend for the FCC to have the authority which it has attempted to assert over carrier terminal equipment. Early drafts of the Act did include provisions requiring any subsidiary or parent of an interstate carrier to obtain FCC approval prior to furnishing equipment to the carrier itself, but this idea was not accepted and the provisions were not enacted.[18]

The FCC, apparently as a result of the dearth of authority in the Act and its legislative history to support the asserted authority over carrier equipment, failed to discuss the basis for its alleged regulatory authority. Instead, it merely gave a list of miscellaneous statutory provisions.[19] *Interstate and Foreign MTS and*

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[18] See Section 215(b) of S. 2910, 73d Cong., 2d Sess., and H.R. 8301, 73rd Cong., 2d Sess., 78 Cong. Rec. 3275, 3367 (Feb. 27, 1934). Compare the present Section 215(b), 47 U.S.C. § 215(b).

[19] Section 4(i), 4(j), 201-05, 208, 215, 218, 313-14, 403-04, 410 and 602, 47 U.S.C. §§ 154(i), 154(j), 201-05, 208, 215, 218, 313-14, 403-04, 410, and 602. Section 4(i) merely empowers the FCC to make rules implementing authority otherwise conferred. Section 4(j) authorizes the Commission to "conduct its proceedings." Sections 201-05 conspicuously omit "facilities" in any respect perti-

WATS, 56 F.C.C.2d 593, 613 (1975) (Pet. App. 37b). Significantly enough, the lower court apparently found little guidance in these provisions of the Act and provided its own basis for the Commission's claimed authority. The basis the lower court found is that contained in Section 205(a) of the Act, 47 U.S.C. § 205(a):

> Whenever, after full opportunity for hearing . . . the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge . . . and what classification, regulation, or practice is or will be just fair and reasonable, to be thereafter followed. . . . (Pet. App. 32a-33a).

The lower court's reliance on Section 205 (a), however, ignores the fact that Section 205 relates to the carrier's obligations to its customers. Thus, while it may be said that the FCC could prescribe carrier practices in lieu of those found to unlawfully preclude connection of customer-provided terminal equipment, there is nothing in this section which would support the FCC's requiring carriers to obtain prior approval before utilizing their own equipment with their own local exchanges. That section does not even apply to carrier facilities or apparatus.

Moreover, the FCC's long-standing and consistent failure to assert any form of prior approval authority

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nent here. Section 208 allows anyone to complain to the Commission. Section 215 directs the Commission to examine and report to Congress. Section 218 authorizes the Commission to "inquire into the management" of carriers. Sections 313-14 deal with radio apparatus and the transmissions. Sections 403-04 and 410 empower the Commission to conduct inquiries and to establish joint boards. Section 602 no longer exists.

over carriers' terminal equipment militates against its present action. Despite the fact that the Communications Act was enacted in 1934, it was not until over forty years later that the FCC claimed authority to require prior approval of carrier equipment that is attached by carriers to their own local exchanges. Since, heretofore, the FCC had never claimed such authority under the Act, strongly suggests that its authority is imaginary. See *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 513 (1949).

While, as the Commission has often argued, it may have wide latitude in the exercise of delegated authority, such is not the equivalent of "untramelled freedom to regulate activities over which the statute fails to confer, or explicitly denies, Commission authority." *NARUC* v. *FCC*, 533 F.2d 601, 617 (D.C. Cir. 1976). Nor can courts, as the lower court did, create powers that do not exist in the proper exercise of their judicial functions.[20] *FTC* v. *Radalam Co.*, 283 U.S. 643, 649 (1931).

2. A further basis for review stems from the direct costs of the FCC's registration program which will be borne by the sixteen hundred telephone companies and, ultimately, their subscribers. The cost to United's operating companies alone will be over 10 million dollars in the first year.[21] Traditionally this Court has given

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[20] In the instant situation the prior approval power is negated by statutory language and legislative history. Hence, the decisions cited by the lower court involving implied power (Pet. App. 25a n20) are not on point. This case resembles, instead, *AT&T* v. *FCC*, 487 F.2d 864 (2d Cir. 1973) in which the Court found that a prior approval power to bar rate changes could not be implied.

[21] Affidavit of D. Wayne Peterson filed with the Court of Appeals, April 2, 1976.

weight to the practical impact of cases being considered for review, and in the instant situation the impact should not be ignored when it is the telephone rate payers who will ultimately bear the costs of a program for which there is no statutory basis.

3. One final and important basis for certiorari exists; namely, assuming, *arguendo,* that the FCC had authority to require prior registration of carrier equipment, the basis that it has given for doing such—equalization of competition—conflicts with this Court's decision in *FCC* v. *RCA Communications, Inc.,* 346 U.S. 86 (1953) and that of the District of Columbia Circuit in *Hawaiian Telephone Co.* v. *FCC,* 498 F2d 771 (D.C. Cir. 1974). Such a conflict is a settled ground for certiorari. Sup. Ct. R. 19 (1).

The basic tenet of carrier regulation under the Act is the public interest and not the mere enhancement of competition. *FCC* v. *RCA, Inc., supra,* 346 U.S. at 97. In its orders, though, the FCC's reason for requiring prior registration of carrier equipment was simply to equalize the competitive positions between carriers and non-carriers as equipment suppliers and thereby, as noted by the dissenting judge, to promote competition in the terminal equipment market. (Pet. App. 43a) Boiled down, the reasons and purposes given by the FCC for the inclusion of carrier-provided equipment in its registration program are "makeweight." For example, the FCC asserted that carrier-supplied terminal equipment possesses the same potential for harm to the network as does customer-supplied equipment. *Interstate and Foreign MTS and WATS,* 56 F.C.C. 2d 593, 601 (1975) (Pet. App. 15b). In the same breathe, though, it admitted that carriers have both the incentive and ability to protect their own network from being harmed by their own

equipment. *Ibid.* (Pet. App. 15b). Moreover, it failed to give consideration to the careful regulatory scrutiny given to the quality of communications service provided by carriers—such scrutiny, applying as it does not only to a specific item of terminal equipment, but to all components and facilities used in the telephone network. In a similar vein, the FCC also indicated that inclusion of carrier-provided equipment in the registration program would aid the Commission "... as a benchmark against which other applications may be judged." *Ibid.* (Pet. App. 15b). This ignores the fact, though, that most Independent carriers purchase equipment from various suppliers and manufacturers, and it would be incumbent on the latter to register such equipment.

In reality, the above reasons of the FCC for registration of carrier equipment were simply to obfuscate the actual basis for registration by carriers. The sole basis for registration by carriers was the FCC's fear that:

> ... when one participant in a competitive market is subject to regulatory constraints (e.g., registration of equipment) while another is not, there exists the possibility of using ... [registration procedures] for competitive advantage. *Ibid.* (Pet. App. 15b-16b).

Such a basis for registration—i.e., competitive equality—flies squarely in the face of the Court's admonition in *FCC* v. *RCA Communications, Inc., supra,* 346 U.S. at 97, that the touchstone of FCC action must be the *public interest* and not mere enhancement of competition. Equally applicable to the present situation is the Court's observation in the *Hawaiian Telephone Co.* case that:

> . . . the Commission has been thinking about competition, not in terms primarily as to its benefit to the public, but specifically with the objective of equalizing competition among *competitors*. This is *not* the objective or role assigned by law to the Federal Communications Commission. 498 F.2d 771, 775-776 (D.C.Cir. 1974) (Emphasis in original).

CONCLUSION

For the reasons stated, certiorari should be granted and the case set for plenary hearing.

Respectfully submitted,

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APPENDIX

Pertinent Provisions Of The Communications Act of 1934

Section 2, 47 U.S.C. § 152, provides:

> (a) The provisions of this chapter shall apply to all interstate and foreign communication by wire or radio, and all interstate and foreign transmission of energy by radio which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all radio stations as hereinafter provided; but it shall not apply to persons engaged in wire or radio communication or transmission in the Canal Zone, or to wire or radio communication or transmission wholly within the Canal Zone.
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> (b) Subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, or (2) any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (3) any carrier engaged in interstate or foreign communication solely through connection by radio, or by wire and radio, with facilities located in an adjoining State or in Canada or Mexico (where they adjoin the State in which the carrier is doing business), of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier, or (4) any carrier to which clause (2) or clause (3) of this subsection would be applicable except for furnishing interstate mobile radio communication service or ra-

dio communication service to mobile stations on land vehicles in Canada or Mexico; except that sections 201-205 of this title shall, except as otherwise provided therein, apply to carriers described in clauses (2)-(4) of this subsection.

* * *

Section 4, 47 U.S.C. § 154, provides in part:

* * *

(i) The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No Commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

* * *

Section 201, 47 U.S.C. § 201, provides:

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable there-

to and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful: *Provided,* That communications by wire or radio subject to this chapter may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for the different classes of communications: *Provided further,* That nothing in this chapter or in any other provision of law shall be construed to prevent a common carrier subject to this chapter from entering into or operating under any contract with any common carrier not subject to this chapter, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further,* That nothing in this chapter or in any other provision of law shall prevent a common carrier subject to this chapter from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.

Section 202, 47 U.S.C. § 202, provides:

(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facili-

ties, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services, whenever referred to in this chapter, include charges for, or services in connection with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

(c) Any carrier who knowingly violates the provisions of this section shall forfeit to the United States the sum of $500 for each such offense and $25 for each and every day of the continuance of such offense.

Section 203, 47 U.S.C. § 203, provides:

(a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regu-

lation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide

and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

Section 204, 47 U.S.C. § 204, provides:

Whenever there is filed with the Commission any new charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, but not for a longer period than three months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had been become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed change of charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and by whom and in

whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased charges as by its decision shall be found not justified. At any hearing involving a charge increased, or sought to be increased, after the organization of the Commission, the burden of proof to show that the increased charge, or proposed increased charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

Section 205, 47 U.S.C. § 205, provides:

(a) Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and

shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(b) Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of this section shall forfeit to the United States the sum of $1,000 for each offense. Every distinct violation shall be a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Section 208, 47 U.S.C. § 208, provides:

Any person, any body politic or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been caused, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Section 214, 47 U.S.C. § 214, provides:

> (a) No carrier shall undertake the construction of a new line of or an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line: *Provided,* That no such certificate shall be required under this section for the construction, acquisition, or operation of (1) a line within a single State unless such line constitutes part of an interstate line, (2) local, branch, or terminal lines not exceeding ten miles in length, or (3) any line acquired under section 221 or 222 of this title: *Provided further,* That the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section. No carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service, or partial discontinuance, reduction, or impairment of service, without regard to the provisions of this section. As used in this section the term "line" means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing

channels: *Provided, however,* That nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction which will not impair the adequacy or quality of service provided.

(b) Upon receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, extended, acquired, or operated, or in which such discontinuance, reduction, or impairment of service is proposed, with the right to those notified to be heard; and the Commission may require such published notice as it shall determine.

(c) The Commission shall have power to issue such certificate as applied for, or to refuse to issue it, or to issue it for a portion or portions of a line, or extension thereof, or discontinuance, reduction, or impairment of service, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. After issuance of such certificate, and not before, the carrier may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, extension, acquisition, operation, or discontinuance, reduction, or impairment of service covered thereby. Any construction, extension, acquisition, operation, discontinuance, reduction, or impairment of service contrary to the provisions of this section may

be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, the State commission, any State affected, or any party in interest.

(d) The Commission may, after full opportunity for hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier and to extend its line or to establish a public office; but no such authorization or order shall be made unless the Commission finds, as to such provision of facilities, as to such establishment of public offices, or as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier which refuses or neglects to comply with any order of the Commission made in pursuance of this subsection shall forfeit to the United States $100 for each day during which such refusal or neglect continues.

Section 215, 47 U.S.C. § 215, provides:

(a) The Commission shall examine into transactions entered into by any common carrier which relate to the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier and/or which may affect the charges made or to be made and/or the services rendered or to be rendered by such carrier, in wire or radio communication subject to this chapter, and shall report to the Congress whether any such transactions have affected or are likely to affect adversely the ability of the carrier to render adequate service to the public, or may result

in any undue or unreasonable increase in charges or in the maintenance of undue or unreasonable charges for such service; and in order to fully examine into such transactions the Commission shall have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, of persons furnishing such equipment, supplies, research, services, finances, credit, or personnel. The Commission shall include in its report its recommendations for necessary legislation in connection with such transactions, and shall report specifically whether in its opinion legislation should be enacted (1) authorizing the Commission to declare such transactions void or to permit such transactions to be carried out subject to such modification of their terms and conditions as the Commission shall deem desirable in the public interest; and/or (2) subjecting such transactions to the approval of the Commission where the person furnishing or seeking to furnish the equipment, supplies, research, services, finances, credit, or personnel is a person directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier; and/or (3) authorizing the Commission to require that all or any transactions of carriers involving the furnishing of equipment, supplies, research, services, finances, credit, or personnel to such carrier be upon competitive bids on such terms and conditions and subject to such regulations as it shall prescribe as necessary in the public interest.

(b) The Commission shall investigate the methods by which and the extent to which wire telephone companies are furnishing wire telegraph service and wire telegraph companies are furnishing wire telephone service, and shall report its finding to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

(c) The Commission shall examine all contracts of common carriers subject to this chapter which prevent the other party thereto from dealing with another common carrier subject to this chapter, and shall report its findings to Congress, together with its recommendations as to whether additional legislation on this subject is desirable.

Section 218, 47 U.S.C. § 218, provides:

The Commission may inquire into the management of the business of all carriers subject to this chapter, and shall keep itself informed as to the manner and method in which the same is conducted and as to technical developments and improvements in wire and radio communication and radio transmission of energy to the end that the benefits of new inventions and developments may be made available to the people of the United States. The Commission may obtain from such carriers and from persons directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

Section 221, 47 U.S.C. § 221, provides in part:

* * *

(b) Subject to the provisions of section 301 of this title, nothing in this chapter shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service, or any combination thereof, even though a portion of such exchange service constitute interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority.

Section 222, 47 U.S.C. § 222, provides:

> (f) (1) Each employee of any carrier which is a party to a consolidation or merger pursuant to this section who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began on or before March 1, 1941, shall be employed by the carrier resulting from such consolidation or merger for a period of not less than four years from the date of the approval of such consolidation or merger, and during such period no such employee shall, without his consent, have his compensation reduced or be assigned to work which is inconsistent with his past training and experience in the telegraph industry.
>
> (2) If any employee of any carrier which is a party to any such consolidation or merger, who was employed by such carrier immediately preceding the approval of such consolidation or merger, and whose period of employment began after March 1, 1941, is discharged as a consequence of such consolidation or merger by the carrier resulting therefrom, within four years from the date of approval of the consolidation or merger, such carrier shall pay such employee at the time he is discharged severance pay in cash equal to the amount of salary or compensation he would have received during the full four-week period immediately preceding such discharge at the rate of compensation or salary payable to him during such period, multiplied by the number of years he has been continuously employed immediately preceding such discharge by one or another of such carriers who were parties to such consolidation or merger, but in no case shall any such employee receive less severance pay than the amount of salary or compensation he would have received at such rate if he were employed during such full four-week period: *Provided, however,* That such severance pay

shall not be required to be paid to any employee who is discharged after the expiration of a period, following the date of approval of the consolidation or merger, equal to the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger.

(3) For a period of four years after the date of approval of any such consolidation or merger, any employee of any carrier which is a party to such consolidation or merger who was such an employee on such date of approval, and who is discharged as a result of such consolidation or merger, shall have a preferential hiring and employment status for any position for which he is qualified by training and experience over any person who has not therefore been an employee of any such carrier.

(4) If any employee is transferred from one community to another, as a result of any such consolidation or merger, the carrier resulting therefrom shall pay, in addition to such employee's regular compensation as an employee of such carrier, the actual traveling expenses of such employee and his family, including the cost of packing, crating, drayage, and transportation of household goods and personal effects.

(5) In the case of any consolidation or merger pursuant to this section, the consolidated or merger carrier shall accord to every employee or former employee, or representative or beneficiary of any employee or former employee, of any carrier which is a party to such consolidation or merger, the same pension, health, disability, or death insurance benefits, as were provided for prior to the date of approval of the consolidation or merger, under any agreement or plan of any carrier which is a party to the consolidation or

merger which covered the greatest number of the employees affected by the consolidation or merger; except that in any case in which, prior to the date of approval of the consolidation or merger, an individual has exercised his right of retirement, or any right to health, disability, or death insurance benefits has accrued, under any agreement or plan of any carrier which is a party to the consolidation or merger, pension, health, disability, or death insurance benefits, as the case may be, shall be accorded in conformity with the agreement or plan under which such individual exercised such right of retirement or under which such right to benefits accrued. For purposes of determining and according the rights and benefits specified in this paragraph, any period spent in the employ of the carrier of which such individual was an employee at the time of the consolidation or merger shall be considered to have been spent in the employ of the consolidated or merged carrier. The application for approval of any consolidation or merger under this section shall contain a guaranty by the proposed consolidated carrier that there will be no impairment of any of the rights or benefits specified in this paragraph.

(6) Any employee who, since August 27, 1940, has left a position, other than a temporary position, in the employ of any carrier which is a party to any such consolidation or merger, for the purpose of entering the military or naval forces of the United States, shall be considered to have been in the employ of such carrier during the time he is a member of such forces, and, upon making an application for employment with the consolidated or merged carrier within forty days from the time he is relieved from service in any of such forces under honorable conditions, such former employee shall be employed by the consolidated or merged carrier and entitled to the

benefits to which he would have been entitled if he had been employed by one of such carrier during all of such period of service with such forces; except that this paragraph shall not require the consolidated or merged carrier, in the case of any such individual, to pay compensation, or to accord health, disability, or death insurance benefits, for the period during which he was a member of such forces. If any such former employee is disabled and because of such disability is no longer qualified to perform the duties of his former position but otherwise meets the requirements for employment, he shall be given such available employment at an appropriate rate of compensation as he is able to perform and to which his service credit shall entitle him.

(7) No employee of any carrier which is a party to any such consolidation or merger shall, without his consent, have his compensation reduced or (except as provided in paragraph (2) and paragraph (8) of this subsection) be discharged or furloughed during the four-year period after the date of the approval of such consolidation or merger. No such employee shall, without his consent, have his compensation reduced, or be discharged or furloughed, in contemplation of such consolidation and merger, during the six-month period immediately preceding such approval.

(8) Nothing contained in this subsection shall be construed to prevent the discharge of any employee for insubordination, incompetency, or any other similar cause.

(9) All employees of any carrier resulting from any such consolidation or merger, with respect to their hours of employment, shall retain the rights provided by any collective bargaining agreement in force and effect upon the date of approval of such

consolidation or merger until such agreement is terminated, executed, or superseded. Notwithstanding any other provision of this Act, any agreement not prohibited by law pertaining to the protection of employees may hereafter be entered into by such consolidated or merged carrier and the duly authorized representative or representatives of its employees selected according to existing law.

(10) For purposes of enforcing or protection of rights, privileges, and immunities granted or guaranteed under this subsection, the employees of any such consolidated or merged carrier shall be entitled to the same remedies as are provided by the National Labor Relations Act in the case of employees covered by that Act; and the National Labor Relations Board and the courts of the United States (including the courts of the District of Columbia) shall have jurisdiction and power to enforce and protect such rights, privileges, and immunities in the same manner as in the case of enforcement of the provisions of the National Labor Relations Act.

(11) Nothing contained in this subsection shall apply to any employee of any carrier which is a party to any such consolidation or merger whose compensation is at the rate of more than $5,000 per annum.

(12) Notwithstanding the provisions of paragraphs (1) and (7), the protection afforded therein for the period of four years from the date of approval of the consolidation or merger shall not, in the case of any particular employee, continue for a longer period, following such date of approval, than the aggregate period during which such employee was in the employ, prior to such date of approval, of one or more of the carriers which are parties to the consolidation or merger. As used in paragraphs (1), (2), and (7), the

term "compensation" shall not include compensation attributable to overtime not guaranteed by collective bargaining agreements.

Section 301, 47 U.S.C. § 301, provides:

> It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction

of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

Section 305, 47 U.S.C. § 305, provides:

(a) Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this Title. All such Government stations shall use such frequencies as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business, shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the Commission may prescribe.

(b) Radio stations on board vessels of the United States Maritime Commission or the Inland and Coastwise Waterways Service shall be subject to the provisions of this subchapter.

(c) All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea, shall have special call letters designated by the Commission.

(d) The provisions of sections 301 and 303 of this title notwithstanding, the President may, provided he determines it to be consistent with and in the interest of national security, authorize a foreign government, under such terms and conditions as he may prescribe, to construct and operate at the seat of government of the United States a low-power radio station in the fixed service at or near the site of the embassy or le-

gation of such foreign government for transmission of its messages to points outside the United States, but only (1) where he determines that the authorization would be consistent with the national interest of the United States and (2) where such foreign government has provided reciprocal privileges to the United States to construct and operate radio stations within territories subject to its jurisdiction. Foreign government stations authorized pursuant to the provisions of this subsection shall conform to such rules and regulations as the President may prescribe. The authorization of such stations, and the renewal, modification, suspension, revocation, or other termination of such authority shall be in accordance with such procedures as may be established by the President and shall not be subject to the other provisions of this chapter or of the Administrative Procedure Act.

Section 313, 47 U.S.C. § 313, provides:

(a) All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as

of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however,* That such licensee shall have the same right of appeal or review, as is provided by law in respect of other decrees and judgments of said court.

(b) The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under this section.

Section 314, 47 U.S.C. § 314, provides:

After the effective date of this chapter no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this chapter, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in

the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control, or operate any station or the apparatus therein, or as any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share of any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case, the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any plac in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

Section 403, 47 U.S.C. § 403, provides:

The Commission shall have full authority and power at any time to institute an inquiry, on its own motion,

in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. The Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motions as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had, excepting orders for the payment of money.

Section 404, 47 U.S.C. § 404, provides:

Whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirements in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

Section 410, 47 U.S. C. § 410, provides:

(a) Except as provided in section 409 of this title, the Commission may refer any matter arising in the administration of this chapter to a joint board to be composed of a member, or of an equal number of members, as determined by the Commission, from each of the States in which the wire or radio communications affected by or involved in the proceeding takes place or is proposed. For purposes of acting upon such matter any such board shall have all the jurisdiction and powers conferred by law upon an examiner provided for in section 1010 of title 5, designated by the Commission, and shall be subject to the same duties and obligations. The action of a joint board shall have such

force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The joint board member or members for each State shall be nominated by the State commission of the State or by the Governor if there is no State commission, and appointed by the Federal Communications Commission. The Commission shall have discretion to reject any nominee. Joint board members shall receive such allowances for expenses as the Commission shall provide.

(b) The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized under such rules and regulations as it shall prescribe to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this title, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review

and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions, as referred to in sections 302(b) and 305 (f) of title 49, and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.